

EXHIBIT 3

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

- - -

3 IN RE: ETHICON, INC. : MDL NO. 2327
4 PELVIC REPAIR SYSTEM :
5 PRODUCTS LIABILITY :
6 LITIGATION :

7 THIS DOCUMENTS RELATES TO ALL CASES

- - -

8 AND VARIOUS OTHER CROSS-NOTICED ACTIONS

- - -

9 Tuesday, August 13, 2013

- - -

10 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

11
12
13 Videotaped Deposition of JAMES P.
14 MITTENTHAL held at Riker Danzig Scherer Hyland
15 Perretti LLP, Headquarters Plaza, One Speedwell
16 Avenue, Morristown, New Jersey, on the above date,
17 beginning at 9:36 a.m., before Kimberly A. Otherwise,
18 a Certified Realtime Reporter, Certified Court
19 Reporter, and Notary Public.

- - -

20
21
22 GOLKOW TECHNOLOGIES, INC.
23 877.370.3377 ph|917.591.5672 fax
24 deps@golkow.com
25

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<p style="text-align: right;">Page 86</p> <p>1 materials that were not expressly communications but 2 may be included with a product such as instructions 3 for use. 4 Q In other words, those were 5 companies (sic) in 6 that are created by the company 6 that relate to the marketing of the product at 7 issue; right? 8 A I'm sorry. Documents created? Well, 9 6 appears to include material beyond marketing 10 material to the outside world, but it encompasses 11 those types of materials. 12 Q And 5 is a little different. Let's go 13 back to 5 for a moment. 5 actually speaks to 14 documents that the company might not have only sent 15 to health care professionals but -- or patients, but 16 also communications or documents that the company 17 might have received from those third parties; right? 18 A Well, it's not explicitly stated, but 19 I would -- I would assume that communications 20 embodies a -- both materials directed outward and 21 materials directed from the outside world to the 22 company. 23 Q Okay. Would that have covered 24 documents that should have been transferred from 25 Medscand to Ethicon?</p>	<p style="text-align: right;">Page 88</p> <p>1 A T-207 -- T-2086. 2 Q Okay. So in looking at T-2086, what 3 you're telling me is while you may not see a 4 reminder, you also see a 2008 hold notice relating 5 to Mersilene mesh; correct? 6 A That's correct. 7 Q Okay. But the notice we just looked 8 at was sent in 2002; right? 9 A That's correct. 10 (Exhibit No. T-2088 was marked for 11 identification.) 12 MR. WALLACE: 5. 13 BY MR. WALLACE: 14 Q Okay. You're going to be handed a 15 document marked as T-2088 dated 22 May 2003. You've 16 seen this; correct? 17 A I believe I have. 18 Q And what is it? 19 A It appears to be a May 22nd, 2003, 20 TVT-related hold notice. 21 Q Now, the document that we looked at 22 right before that related to Mersilene mesh. Do you 23 know what Mersilene mesh is? 24 MR. WATSON: Objection; asked and 25 answered.</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. WATSON: Object as to form. 2 But you can answer if you can. 3 THE WITNESS: Yeah, I don't know 4 specifically the context for those materials. 5 BY MR. WALLACE: 6 Q Again, just for the record, you have 7 not seen any reminders that were ever sent out about 8 the hold notice that is referenced in this exhibit; 9 correct? 10 MR. WATSON: Object to form. 11 But you can answer if you can. 12 THE WITNESS: Well, other than the -- 13 there was a Mersilene notice in 2008. 14 BY MR. WALLACE: 15 Q And what are you looking at? 16 A I'm looking at Exhibit T-2086. 17 Q What's the Bates range on that just 18 for the record? 19 A Of the -- the list of -- 20 Q It's Mittenthal 1273? 21 A Yes. 22 Q Okay. And what's the Bates number for 23 the record? 24 A Mittenthal 1273? 25 Q I'm sorry. The blue sticky.</p>	<p style="text-align: right;">Page 89</p> <p>1 But you can answer if you can. 2 THE WITNESS: I have a general 3 understanding that it's a mesh product created by 4 the company. 5 BY MR. WALLACE: 6 Q You understand that TVT, that product, 7 is the subject of the litigation for which we are 8 here today; correct? 9 A Yes. 10 Q And so you would agree with me that -- 11 as the company witness that J&J is stating at this 12 time in 2003 that it is on notice regarding 13 litigation regarding the TVT product; right? 14 MR. WATSON: Object as to form. 15 Answer if you can. 16 THE WITNESS: Yes. 17 BY MR. WALLACE: 18 Q Okay. Is this the earliest hold 19 notice that you are aware of regarding TVT? 20 A Yes, it is. 21 Q And the purpose of this litigation 22 hold notice regarding TVT in May of 2003 would have 23 been so that the company could preserve evidence 24 that might be relevant to legal proceedings; right? 25 MR. WATSON: Object to form.</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">Page 90</p> <p>1 Answer if you can. 2 THE WITNESS: Yes, it is instruction 3 directing people to comply with the preservation of 4 data as set forth in the notice. 5 BY MR. WALLACE: 6 Q In other words, it was a notice that 7 was an effort by the company to comply with their 8 legal obligations to preserve evidence; correct? 9 MR. WATSON: Same objection. 10 THE WITNESS: Yes. 11 BY MR. WALLACE: 12 Q Do you know whether or not this was a 13 new notice or a reminder? 14 A My understanding is that this is a new 15 notice. 16 Q Have you looked at the allegations in 17 Kandell versus Ethicon, et als.? 18 A The circumstances of the actual case? 19 Q Yes. 20 A Not in detail, no. 21 Q Were you told anything about the 22 allegations in the cases that are referenced in the 23 middle of the page where it says "RE: Hold Notice 24 for Kandell v. Ethicon, Inc., et als."? 25 A As I mentioned, I was -- I was -- it</p>	<p style="text-align: right;">Page 92</p> <p>1 called Ethicon Interactive Communications would have 2 sent? 3 A Yes. 4 Q Who would we talk to? 5 A The -- one of the individuals 6 responsible for dissemination of the materials, 7 which would include, depending on the time frame, 8 Linda McNelis or Wanda Patire-Singer. 9 Q And you interviewed them in connection 10 with preparation for your testimony today; correct? 11 A The -- Ms. Patire-Singer was 12 reinterviewed. Ms. McNelis was interviewed at the 13 time of my last deposition. 14 Q You would agree with me that this 15 notice was sent on 22 May 2003 at 20:07:19 GMT; 16 correct? 17 A Yes. 18 Q And let's look at the second page. 19 And you'll see that we see the same names again, do 20 we not, Taysen Van Itallie and Lisbeth A. Warren? 21 A Yes. 22 Q This looks very familiar to the 2002 23 notice, does it not? 24 A Yes. 25 Q Let's look at 1 through 7. Again, it</p>
<p style="text-align: right;">Page 91</p> <p>1 was indicated to me that these were what were 2 described as one-off cases that had been 3 dispositioned. That's the extent of my knowledge. 4 Q Look at the top of the page where it 5 says Rita McIntyre, RN, RAC. 6 Do you know who that is? 7 A No, I do not. 8 Q Do you believe or have information to 9 suggest that Rita McIntyre was the individual that 10 sent this e-mail? 11 A It would appear that the e-mail was 12 sent by Ethicon Interactive Communications. 13 Q And what is that, if you know? 14 A That would be a mailbox for whom the 15 dissemination of materials such as hold notices 16 would be issued from. 17 Q What other sort of communications 18 would come from Ethicon Interactive Communications? 19 A I don't know. 20 Q Do you know whether it might have 21 included, for example, daily updates about the 22 company? 23 A I don't know. 24 Q Do you know who we would talk to to 25 find out what sort of communications the mailbox</p>	<p style="text-align: right;">Page 93</p> <p>1 seeks information regarding labeling, but this time 2 around would you agree with me that the word "TVT" 3 is used in the hold notice? 4 A Yes. 5 Q And it says "Subject matters of 6 documents to be preserved: TVT"; correct? 7 A Yes. 8 Q It doesn't delineate between any type 9 of TVT product, it says TVT; correct? 10 A Correct. 11 Q And you would agree with me that using 12 it in that form would broadly imply that it would 13 concern all TVT-type products; correct? 14 A I would construe that to refer to a 15 range of TVT products. I -- I don't -- I'm not a 16 product specialist. I know there are other types of 17 TVT that have delineations after them. 18 Q But this notice does not delineate 19 between the different products that might have been 20 on the market at the time; correct? 21 A It simply says TVT. 22 Q It again seeks the labeling 23 information for TVT? 24 A Yes. 25 Q And it seeks pharmacovigilance</p>

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1 information relating to TVT; correct?
 2 A Yes.
 3 Q It seeks -- again, it has the same
 4 typo. Do you see that?
 5 A Yes, I do.
 6 Q And so the Mersilene hold notice that
 7 we looked at was from July 22, 2002. So this is
 8 almost a year later and it's got the same typo;
 9 would you agree?
 10 A As I mentioned, I believe it's -- from
 11 my read of it that it's a typo and, yes, it has the
 12 same omission.
 13 Q And so -- and that's in Paragraph 3,
 14 the regulatory, where it says: "All final draft
 15 communications with regulatory authorities regarding
 16 the TVT..."
 17 Do you see that?
 18 A Yes.
 19 Q Okay. It also seeks discovery,
 20 research and development material relating to the
 21 TVT; correct?
 22 A Yes.
 23 Q And I have the same questions that I
 24 had earlier regarding the Mersilene mesh and product
 25 as it relates to the TVT. If there were scientific

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1 products that were either analyzed or created for
 2 the TVT, would you agree with me that those would be
 3 sought here in this hold notice to be preserved even
 4 though they weren't actual paper documents?
 5 MR. WATSON: Object to form.
 6 But you can answer if you can.
 7 THE WITNESS: I would suggest that if
 8 the information about the R&D was embodied in a form
 9 by which it might be construed as a record and if it
 10 is relevant to litigation, it would be covered under
 11 Section 4.
 12 BY MR. WALLACE:
 13 Q Thank you. Again, Paragraph 5 seeks
 14 product communications, not only internal
 15 communications but also external communications;
 16 correct?
 17 A Yes.
 18 Q And Paragraph 6 seeks, again,
 19 marketing and sales material just like the 2002
 20 notice did; correct?
 21 A Correct.
 22 Q And Paragraph 7 seeks manufacturing
 23 documents just like the 2002 notice did; correct?
 24 A Yes.
 25 Q And it says with respect to

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1 manufacturing documents, it says: "If product lot
 2 batch is known, all TVT lot and batch records,
 3 quality assurance and manufacturing controls and
 4 product complaints."
 5 Do you see that?
 6 A Yes, I do.
 7 Q And there's a Paragraph 8 that speaks
 8 to distribution. Do you see that?
 9 A Yes, I do.
 10 Q And what documents are sought to
 11 preserve -- are sought to preserve under Paragraph 8
 12 in May of 2003?
 13 A Within the context of the product
 14 supply chain, the material related to its
 15 distribution.
 16 Q And would the notice itself have
 17 covered the documents that should have been
 18 transferred from Medscand to Ethicon related to the
 19 TVT products?
 20 MR. WATSON: Object as to form.
 21 But you can answer if you can.
 22 THE WITNESS: As I previously
 23 testified, I can't speak to the -- that particular
 24 circumstance.
 25

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1 BY MR. WALLACE:
 2 Q Why not?
 3 A I'm not familiar with the
 4 circumstances surrounding that -- that incident.
 5 Q Okay. So you would agree with me that
 6 we've looked at a hold notice dated July 22 -- I'm
 7 sorry -- July 2002 and we've also looked at this 22
 8 May 2003 notice; correct?
 9 A Yes.
 10 Q And would you agree with me that the
 11 new exhibit that you produced today -- let's go back
 12 to that for a moment -- lists both of those?
 13 A Yes.
 14 Q Would you agree with me that you have
 15 asked as a representative of the company, someone
 16 that has been engaged by the company to testify here
 17 today to hold notices, to have all hold notices and
 18 documents thereto provided to you?
 19 A I'm sorry. Hold notices and --
 20 Q I'm sorry. Let me ask it differently.
 21 You agree with me that you asked for all the hold
 22 notices; correct?
 23 A Pertaining to mesh and tape
 24 litigation; yes.
 25 Q And you asked for all reminders

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1 relating to those hold notices; correct?
 2 A Yes.
 3 Q And would you agree with me that the
 4 exhibit that we're looking at here, which is
 5 Mittenthal 1273, between 7/22/2002 and 5/22/2003
 6 that there are no reminders; correct?
 7 A I'm sorry. Between -- what were the
 8 dates you said?
 9 Q The first two documents --
 10 A Yes.
 11 Q -- there are no reminders; correct?
 12 A I'm sorry. Between the -- between
 13 Document 1 and Document 2?
 14 Q July 22, 2002 --
 15 A Yes.
 16 Q -- and May 22, 2003, there are no
 17 reminders that are sent relating to mesh of any
 18 kind; correct?
 19 A There are no formal reminders in
 20 this -- in this format.
 21 Q Okay. And you've asked for reminders;
 22 correct?
 23 A Yes, I have.
 24 Q And whether formal or informal, you
 25 haven't been provided with them unless they're shown

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1 on Mittenthal 1273; correct?
 2 A As I mentioned, reminders can come in
 3 many forms. I asked for formal reminders and I --
 4 this is what I received.
 5 Q You asked for reminders that were in
 6 writing?
 7 A Well, for instance, an e-mail sent by
 8 a manager to a subordinate, I would not have
 9 expected to have received that type of a reminder,
 10 but the formal companywide reminders I asked for and
 11 received.
 12 Q And the only reminders that are listed
 13 on your entire document are an April 18, 2003, and
 14 July -- I'm sorry -- 2013 and July 16, 2013;
 15 correct?
 16 A I would disagree with that from the
 17 standpoint that there are notices that are entitled
 18 "Consolidated" or there is a reference made to
 19 consolidated which also serve as reminders and that
 20 the --
 21 Q And those are the -- that's the
 22 consolidated notices that were sent in February of
 23 2011; correct?
 24 A Yes. And I would also suggest that
 25 the notices surrounding some of these products

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1 served as reminders even if they were, in fact, in
 2 connection with other litigation.
 3 Q In other words, if there was other
 4 mesh litigation and it wasn't necessarily TVT
 5 litigation, for example, it could help put an
 6 individual at the company on notice that they need
 7 to be preserving mesh-related information; correct?
 8 A Depending on the subject matter of the
 9 notice, but yes.
 10 (Exhibit No. T-2089 was marked for
 11 identification.)
 12 BY MR. WALLACE:
 13 Q Okay. So let's look at the next
 14 notice. You've been handed a document that's been
 15 marked as T-2089. I'm going to ask you if you can
 16 identify it for me.
 17 A It appears to be the April 27th, 2006,
 18 TVT hold notice referenced in my list.
 19 Q And when you say your list, you're
 20 talking about the Mittenthal 1273 which identifies
 21 the dates of the holds and the product at issue;
 22 right?
 23 A Yes.
 24 Q Okay. Would you agree with me that
 25 this is the second notice relating to TVT generally?

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1 A Yes.
 2 Q Okay. So, in other words, we have our
 3 first TVT notice -- and, again, I'm asking you as a
 4 witness for the company. You are telling us that
 5 the first notice relating to TVT was sent on May 22,
 6 2003, and the second notice was sent on April 27,
 7 2006; correct?
 8 MR. WATSON: Object as to form.
 9 Answer if you can.
 10 THE WITNESS: Yes, I am.
 11 BY MR. WALLACE:
 12 Q And do you know the circumstances of
 13 the hold here?
 14 A No. I have just a general
 15 understanding that -- of the -- there was a specific
 16 case that it is in reference to.
 17 Q Do you know who Lana Keeton is?
 18 A I do not.
 19 Q Did you -- were you told anything
 20 about Lana Keeton?
 21 A As I mentioned, I may have been told
 22 that this case was a -- what was described as a
 23 one-off case that had been dispositioned. That's
 24 all I recall.
 25 Q Well, let's look at this April 27,

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1 department would carry more weight.
 2 BY MR. WALLACE:
 3 Q Can you look at the April 18 notice
 4 that we were just looking at? And look at Bates No.
 5 29376, specifically at the bottom of the page where
 6 it says: "CONSEQUENCES OF THE FAILURE TO COMPLY
 7 WITH THIS NOTICE."
 8 Would you agree with me that that
 9 April 18, 2013, legal hold letter provides very
 10 specific instructions about the failure to comply
 11 with the notice?
 12 A Yes.
 13 Q And it mentions that the company could
 14 be subject to severe sanctions and penalties and if
 15 the employee doesn't follow it, of course, the
 16 employee that is the subject of the notice could
 17 have disciplinary action taken against that
 18 employee; correct?
 19 A Yes.
 20 Q Now, you mentioned earlier today about
 21 some informal information that you learned about
 22 during some of your interviews where some managers
 23 might have told employees about their obligations
 24 under the legal holds. Do you recall that?
 25 A Yes.

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1 BY MR. WALLACE:
 2 Q But they didn't list TVTs or Prolifts,
 3 did they? They were just training materials that,
 4 for example, new employees received?
 5 A New employees and current employees in
 6 an ongoing fashion. They were training materials.
 7 Q But you would agree with me that those
 8 training materials did not reference TVT products?
 9 A I would agree.
 10 Q You would agree with me that those
 11 training materials did not address Gynecare Prolift
 12 products?
 13 A It -- no. It would have been the role
 14 of the manager to connect the specific product to
 15 the training material.
 16 Q And, again, I want to make sure you
 17 answer this question. Do you have any evidence
 18 whatsoever that there was anything remotely looking
 19 like this document at 29376 where there is a
 20 specific warning about what could happen to the
 21 company that was ever sent as a reminder by anyone
 22 to an employee at the company that was the subject
 23 of the hold notices that we've talked about today?
 24 MR. WATSON: Object to form.
 25 But you can answer if you can.

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1 Q Do you have any evidence that any
 2 directions like this warning here in 29376 were ever
 3 sent outside of the exhibits we've looked at?
 4 A I don't have any evidence to indicate
 5 that this precise form of communication was provided
 6 by a manager.
 7 Q Well, let's take it a step further
 8 then so we're making sure we're on the same page.
 9 Do you have any evidence whatsoever that any warning
 10 remotely like this was ever sent as a reminder to
 11 anyone subject to these litigation hold notices that
 12 we've talked about today?
 13 MR. WATSON: Object to form.
 14 You should answer if you can.
 15 THE WITNESS: Well, the reminders
 16 would have been -- and as I mentioned, as was my
 17 testimony, I don't have the exact verbiage or
 18 statements that would have been made, but I can
 19 speak to the fact that the reminders were given in
 20 the context of the -- the overall litigation hold
 21 program, including the original and continuing
 22 training material. And those materials provide
 23 similar indications of the importance of adhering to
 24 the litigation hold.
 25

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1 THE WITNESS: I don't have that
 2 specific information.
 3 BY MR. WALLACE:
 4 Q We -- you would also agree with me
 5 that -- again, we talked about this up through 2011,
 6 but I just want to make sure that the record's
 7 clear. Would you agree with me that you have no
 8 evidence whatsoever as you sit here today as the
 9 company witness that any of the litigation holds
 10 that we've talked about were ever removed?
 11 MR. WATSON: Object to form.
 12 You can answer if you can.
 13 THE WITNESS: No evidence they were
 14 removed? My understanding is that the holds are --
 15 continue to be in effect.
 16 BY MR. WALLACE:
 17 Q Right. All the way from 2002 through
 18 at least what we've looked at today, April 18, 2013;
 19 correct?
 20 MR. WATSON: Object to form.
 21 Answer if you can.
 22 THE WITNESS: Correct.
 23 BY MR. WALLACE:
 24 Q And, furthermore, it's no longer
 25 April, we're in August, but just to totally close

50 (Pages 194 to 197)